STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER JAMES DONKERS,

Plaintiff-Appellant,

V

DAVID J. CALANDRO, WAYNE COUNTY FRIEND OF THE COURT, DANIEL FLANAGAN, ALAN F. SKROK, DANIEL WRIGHT, STATE COURT ADMINISTRATOR'S OFFICE, DEBORAH L. E. GREEN, DAWN A. MONK, JOHN D. FERRY, RAAEN NIAL, and WAYNE COUNTY JUDGE,

Defendants-Appellees.

UNPUBLISHED
September 19, 2006

No. 268403
Wayne Circuit Court
LC No. 05-502358-CZ

Before: Murray, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiff appeals, as of right, the trial court's order granting summary disposition in defendants' favor. Because we conclude defendants followed proper procedure, acted within the scope of their authority, and were entitled to immunity, we affirm.

Plaintiff filed a complaint for declaratory judgment and for violation of his civil rights based upon defendants' actions in post-divorce judgment proceedings. According to plaintiff, he and his former wife agreed that child support for the parties' minor child would be reserved until both parties obtained full-time employment and such agreement was incorporated in both a June, 2003 order and the parties' judgment of divorce. Plaintiff contended that before he was employed on a full time basis, and without any authority, the Wayne County Friend of the Court (FOC) improperly investigated whether child support should be modified and ultimately recommended that plaintiff pay child support. Plaintiff alleged that procedural irregularities occurred in these and later proceedings which deprived him of property without due process of law. In lieu of answering plaintiff's complaint, defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10).

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Corley v Detroit Bd of Ed,* 470 Mich 274, 277; 681 NW2d 342 (2004). MCR 2.116(C)(7) permits summary disposition where the claim is barred because of any one of several occurrences,

including release, payment, or immunity granted by law. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where no material facts are in dispute, whether the claim is barred is a question of law. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000).

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). In assessing a motion brought under MCR 2.116(C)(8), all factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id*. In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Corley, supra* at 278. If the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

At the outset, the Court notes that commingled with plaintiff's specific arguments on appeal is his apparent mistaken belief that he and his ex-wife could agree to non-payment of child support. However, biological parents have an inherent obligation to support their children and the parents of a child are not permitted to bargain away a child's right to receive adequate support. *Evink v Evink*, 214 Mich App 172, 175-176; 542 NW2d 328 (1995). This Court has thus rejected agreements purporting to sign away the rights of a child, particularly when the result of such an agreement may be that the child becomes a public charge. *Macomb County Dept of Social Services ex rel Roberts v Westerman*, 250 Mich App 372, 377; 645 NW2d 710 (2002). To the extent, then, that plaintiff's appeal is premised upon such mistaken belief, his appeal is without merit.

Plaintiff first asserts that defendants were required to serve plaintiff with a motion or petition to initiate a modification of child support. MCL 552.517 sets forth this requirement, providing, in part:

> (1) After a final judgment containing a child support order has been entered in a friend of the court case, the office shall periodically review the order. . .
> . . .
> (b) At the initiative of the office, if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified. . . Reasonable grounds to review an order under this subdivision include. . . changed financial conditions of a recipient of support or a payer including, but not limited to, application for or receipt of public assistance. . .
> (c) At the direction of the court.
> . . .
> (4) The office shall petition the court if modification is determined to be necessary. . .

Here, by all accounts, the judgment of divorce contained a provision referring the issue of future child support to the friend of the court for an investigation and recommendation. This provision is encompassed in a consent judgment signed by plaintiff and, although plaintiff fails to recognize it as such, serves as an order regarding child support. The order clearly provided a statutory basis for investigation (see MCL 552.517(1)(c)), as did information that plaintiff's ex-wife was receiving public assistance (MCL 552.517(1)(b)).

Further, MCL 552.517b(3) provides that the friend of the court shall initiate proceedings to review support by sending a notice to the parties, requesting information sufficient to allow the friend of the court to review support. MCL 552.517(5) states that the notice under section 17b(3) constitutes a petition for modification of the support order and shall be filed with the court. The FOC, by plaintiff's own admission, sent him written correspondence regarding a child support investigation. Pursuant to MCL 552.517(5), this notice served as the petition for purposes of child support modification. Contrary to plaintiff's assertion otherwise, then, the FOC followed applicable law and utilized proper procedure to initiate an investigation and recommendation concerning child support modification. Moreover, after the recommendation was issued, plaintiff participated in a hearing before a referee and participated in the events following such hearing, indicating that plaintiff had ample notice of all proceedings and their purposes. Plaintiff's first argument is thus without merit.

Plaintiff next claims that defendants were required to serve him with the referee's recommendation and, because it was never served upon him, he could make no objection to the same. Plaintiff cites to MCR 3.215(E)(1) in support of his argument on this issue:

> Within 21 days after a hearing, the referee must either make a statement of findings on the record or submit a written, signed report containing a summary of testimony and a statement of findings. In either event, the referee must make a recommendation for an order and arrange for it to be submitted to the court and the attorneys for the parties, or the parties if they are not represented by counsel. A proof of service must be filed with the court.

The referee in the instant matter undisputedly recommended, on the record, that child support be modified and that the parties' income be reinvestigated to properly calculate the support. While it is unclear whether the recommendation was reduced to writing and served upon the parties, both parties were present at and participated in the hearing and were made aware of the recommendation. Plaintiff, in fact, objected to the recommendation on the record and indicated his wish to appeal the same. A de novo hearing based upon his objection was thereafter scheduled and held, the matter thus proceeding in the same manner as if plaintiff had filed a written objection. Where plaintiff had actual notice of the recommendation and acted upon it, the fact that there was no written recommendation served upon him had no adverse effect on plaintiff's rights.

Next, plaintiff claims the FOC has no authority to request a de novo hearing before the trial court. Plaintiff has cited no authority in support of this argument. A party may not merely announce his position and leave it to the court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little or no citation of supporting authority. *Houghton v Keller,* 256 Mich App 336, 339; 662 NW2d 854 (2003).

Moreover, plaintiff participated in the hearing before the referee and, after the referee made his recommendation on the record, was informed that if either party did not like the ruling, he or she had a right to de novo review before the circuit court judge. Plaintiff thereafter stated he still moved to dismiss and the referee advised plaintiff that if he did not like the ruling, the judge's court attorney would set up a de novo review hearing. Plaintiff then asked the referee if he would be willing to allow plaintiff an appeal based upon the hearing, at which point the referee again explained that since he had requested a review, the judge's court attorney would schedule a hearing. Plaintiff did not object to the referee forwarding his request for de novo review to the judge's court attorney and, in fact, simply asked the referee how soon he could get a copy of the hearing transcript. A de novo hearing was thereafter scheduled, in which plaintiff participated.

Plaintiff, then, explicitly conveyed his request for a review of the referee's recommendation and a hearing was scheduled in accordance with his request. There is no dispute that plaintiff was thereafter served with notice of the hearing, then attended and actively participated in the same. Given plaintiff's lack of cited support for his position and because plaintiff himself not only appears to have orally requested a de novo hearing, but also failed to object to the scheduling of a hearing or request that the de novo hearing be cancelled, the Court finds no error.

Plaintiff's final argument on appeal appears to essentially be that because defendants' actions were unauthorized, they were not entitled to absolute or qualified immunity. Plaintiff, however, has again failed to cite any binding, relevant authority in support of this argument. See, *Wilson v Taylor, supra; Houghton v Keller*, *supra.* Moreover, plaintiff's claims of unauthorized actions are premised upon the alleged procedural irregularities set forth above. The court having addressed plaintiff's claims of irregularity and finding no basis for the same, plaintiff's claim that immunity is inapplicable must likewise fail.

Plaintiff's challenge to immunity also fails due to the fact that defendants were acting in their official capacities as employees of the circuit court or the state court administrator's office when they allegedly erred in dispensing their duties.[1] As the FOC's duties are quasi-adjudicative, absolute immunity would apply to FOC employees. See, e.g., *Tidik v Ritsema,* 938 F Supp 416, 422-423 (ED Mich, 1996); *Wagner v Genesee County Bd of Com'rs*, 607 F Supp 1158, 1163 (ED Mich, 1985).

With respect to the remaining defendants, it has long been held that when performing discretionary functions, government officials generally are shielded from civil liability so long

[1] This Court reviews questions of law, such as constitutional issues and the applicability of immunity, de novo. *Mitchell v Forsyth,* 472 US 511, 528; 105 S Ct 2806; 86 L Ed 2d 411 (1985); *Bengston v Delta Co,* 266 Mich App 612, 617; 703 NW2d 122 (2005).

as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v Fitzgerald*, 457 US 800, 818; 102 SCt 2727; 73 LEd2d 396 (1982). In analyzing whether a state actor enjoys qualified immunity from suit, a three-part test is generally used: "*First,* we determine whether, based upon the applicable law, the facts viewed in the light most favorable to the plaintiffs show that a constitutional violation has occurred. *Second,* we consider whether the violation involved a clearly established constitutional right of which a reasonable person would have known. *Third,* we determine whether the plaintiff has offered sufficient evidence to indicate that what the official allegedly did was objectively unreasonable in light of the clearly established constitutional rights." *Champion v Outlook Nashville, Inc,* 380 F 3d 893, 900-01 (CA 6, 2004) (citation omitted). If the answer to all three questions is yes, then qualified immunity is not proper. *Id.* at 901.

Here, the first prong of the immunity test has not been satisfied. Plaintiff brought his claims under 42 USC 1985 and 1986. 42 USC 1985, however, addresses conspiracies to interfere with civil rights that are predicated upon some racial or other class-based discriminatory animus. *Griffin v Breckenridge,* 403 US 88, 102-103; 91 S Ct 1790; 29 L Ed 2d 338 (1971). Plaintiff has neither claimed nor shown any such discriminatory animus. 42 USC 1986 claims cannot survive absent a violation of §1985. *Asmar v Keilman,* 756 F Supp 332, 335 (ED Mich, 1991). It not being established that a violation of 42 USC 1985 or 1986 occurred, defendants are entitled to qualified immunity and summary disposition was properly granted in their favor.

Affirmed.

/s/ Christopher M. Murray
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto